



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2003

Ms. Cynthia Villarreal-Reyna  
Section Chief, Agency Counsel  
Legal & Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2003-7720

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 190295.

The Texas Department of Insurance ("TDI") received a request for "all information, files and records on [the requestor, her father], and his clinic . . . [and] the Dolenz Defense Trust." You state that you will release some responsive information to the requestor. You assert a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Initially, we address TDI's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). In addition, section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general: (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement as to the date on which the written

request for information was received by the governmental body or evidence sufficient to establish that date; and (4) a copy of the specific information requested or representative samples of it, if a voluminous amount of the information was requested, labeled to indicate which exceptions apply to which parts of the information. *See* Gov't Code § 552.301(e).

You state that TDI received the written request for information on August 12, 2003. Thus, TDI should have submitted a request for an attorney general decision no later than August 26, 2003 and forwarded all other required documentation to this office by September 3, 2003. However, you submitted your letter requesting a decision from our office and your supporting documentation on August 27 and September 4, 2003, respectively. Consequently, we conclude that TDI failed to comply with the procedural requirements of section 552.301 in requesting this decision.

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. A governmental body must release information presumed public under section 552.302, unless it demonstrates a compelling reason to withhold the information. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because you assert section 552.101 of the Government Code, which can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses the doctrine of common-law privacy, which protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, however, the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting

distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

You claim the information you have marked, including policy numbers, claim numbers, and damage/claim amounts, is protected by common-law privacy. After reviewing your arguments and the documents at issue, we agree that TDI must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. TDI must release the remainder of the information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

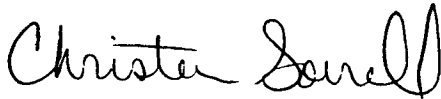
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Christen Sorrell". The signature is written in a cursive, flowing style.

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 190295

Enc: Submitted documents

c: Ms. Brenda Jean Dolenz-Helmer  
4900 Birchman  
Fort Worth, Texas 76107  
(w/o enclosures)